



THE ATTORNEY GENERAL OF TEXAS

PRICE DANIEL
ATTORNEY GENERAL

AUSTIN, TEXAS

June 1, 1949

Hon. Ray Kirkpatrick, Chairman
House Appropriations Committee
51st Legislature
Austin, Texas

Opinion No. V-839

Re: The necessity for enabling legislation to make the 1% transfer from the permanent school fund under Art. 7, Sec. 5, Constitution.

Dear Sir:

Pursuant to the request of the House Appropriations Committee you have submitted to this office the following questions:

"Has an enabling act ever been passed concerning Article VII, Section 5, Constitution of Texas; if not, is one necessary to transfer annually 1% of the permanent school fund to the available school fund.

"May a transfer from the permanent school fund to the available school fund of 1% be affected by a rider on a general appropriation bill or would it require special legislation?"

Section 5 of Article VII, Constitution of Texas, insofar as pertinent to the submitted inquiries, reads as follows:

"The principal of all bonds and other funds, and the principal arising from the sale of the lands hereinbefore set apart to said school fund, shall be the permanent school fund, and all the interest derivable therefrom and the taxes herein authorized and levied shall be the available school fund, to which the Legislature may add not exceeding one per cent annually of the total value of the permanent school fund, such value to

be ascertained by the Board of Education until otherwise provided by law, and the available school fund shall be applied annually to the support of the public free schools. . ." (Underscore ours)

The Texas Constitution of 1876 contained the above provisions except those words underscored, they were added by adoption of a constitutional amendment. The amendment was adopted at an election held in August, 1891, pursuant to Joint Resolution No. 19, 22nd Legislature, R.S. page 195, Acts 1891. 10 Gammel Laws 197.

Immediately following the adoption of this Amendment, the 22nd Legislature in called session enacted H.B. 14 of Acts 1892, 1st C.S., ch. 9, p. 8 (10 Gammel Laws 372), carrying into effect the amendment to Article VII, Section 5, transferring annually one per cent of the permanent to the available school fund. This Act reads in part as follows:

"Section 1. Be it enacted by the Legislature of the State of Texas: That one per cent of the full value of what is known, held and controlled by the State of Texas, as the permanent school fund, shall be transferred annually hereafter to the credit of the available school fund of the state, as belonging to it, and a part of the same, and which henceforward shall constitute a part of the state's available school fund and to be used and applied for the support, maintenance and benefit of the public free schools of the state, as now or hereafter may be provided by law.

"Sec. 2. Be it further enacted: It shall be the duty of the comptroller and the state treasurer to notify the state board of education of the amount to the credit of the permanent school fund on the first to the fifteenth day of July of each and every year. The said statement shall show the amount invested, in bonds, the amount of outstanding land notes, and the amount of cash on hand to the credit of the permanent school fund. Upon the receipt of this information the state board of education shall estimate one per cent of the said permanent school fund and shall issue directions to the said comptroller and state treasurer to transfer the one per cent

of the permanent fund thus found to the credit of the available school fund.

"Sec. 3. Be it further enacted: That it shall be the duty of the state comptroller and state treasurer, upon the receipt and delivery to them, by said board of education, of the showing and statement aforesaid, as set forth in section 2 of this act, to transfer and place to the credit of the available school fund of the state the amount found and ascertained by said board of education, as aforesaid, and accruing from the one per cent of the value of the permanent school fund, and transferred to the available school fund under section 1st of this act. Provided that no part of the value thereof, of the unsold public land belonging to said fund shall be included or considered by the comptroller and state treasurer in ascertaining the amount to be transferred from the permanent to the available free school fund.

"Sec. 4. Be it further enacted: That it shall be the duty of the state board of education and comptroller, in the management and investment of the permanent school fund, to provide, reserve and set apart in cash, annually, an amount sufficient of same to meet the one per cent annual transfer to the available fund."

These quoted provisions were incorporated by the 23rd Legislature in its comprehensive enactment to provide for a more efficient system of public free schools. Section 9(a) through (d), Acts 1893, Ch. 122, p. 182; 10 Gammel Laws 612, 615. That section and its subdivisions were codified in Chapter 7 of Title LXXXVI of Revised Statutes, 1895, as Articles 3897 to 3901, inclusive.

In 1905, however, the 29th Legislature at its Regular Session, enacted S.B. 218 (Acts 1905, Ch. 124, p. 263), to provide for a complete system of public free schools in Texas. Section 179 of this Act provided that "all provisions of Chapter 7 . . . Title LXXXVI of R.S. 1895 and all amendments thereto not herein specifically reenacted are hereby repealed. . ." Only Article 3897, R.S. 1895, was reenacted in Section 10 of the Acts 1905, which was subsequently codified in Revised Statutes, 1911, as Article 2725, and reads as follows:

"Besides other available school funds provided by law, one-fourth of all occupation taxes and one dollar poll tax levied and collected for

the use of public free schools, exclusive of the delinquencies and cost of collection, the interest arising from any bonds or funds belonging to the permanent school fund, and all the interest derivable from the proceeds of sales of land heretofore set apart for the permanent school fund, which have hitherto, or may hereafter, come into the state treasury, all moneys arising from the lease of school lands, and such an amount of state tax, not to exceed twenty cents on the one hundred dollars valuation of property, as may be, from time to time, levied by the legislature, shall constitute the available school fund, which fund shall be apportioned annually to the several counties of this state, according to the scholastic population of each, for the support and maintenance of the public free schools."

Article 2725, R.S. 1911, is codified as Article 2823 in R.C.S., 1925, substantially unchanged except that such Article 2725 read "not to exceed twenty cents on the one hundred dollars valuation" and not "thirty five cents," as provided in the 1925 revision. Except for the "thirty five cents" modification, Article 2823, R.C.S. 1925 and V.C.S. presently reads identical with the enactment in S.B. 218, Acts 1905.

From the above cited enactments, it is apparent that since 1905 there has been no annual transfer of one per cent of the permanent to the available school fund by any Legislature, as authorized by Section 5 of Article VII of the Constitution as amended in 1891.

The Available School Fund is commonly appropriated by the Legislature each biennium in its departmental appropriation bill. For example, the last such bill, S.B. 391 of Acts 50th Legislature, 1947, Ch. 400, at p. 841, provided:

"For the purpose provided by law, there are appropriated for the biennium ending August 31, 1939, to the State Board of Education all income to, and balance in, the Available School Fund and the State Textbook Fund, except as otherwise appropriated by this Legislature, to be expended and distributed in accordance with the laws of this State. . . ."

If the Legislature desires to transfer one per cent of the permanent to the Available School Fund as authorized by Section 5

of Article VII, it may properly do so by general law (as did the 22nd Legislature in 1892). Such law could also contain the procedure necessary to effect the transfer. A provision in its departmental appropriation bill similar to that quoted herein from S.B. 391, Acts 1947, will then appropriate the Available School Fund as so enlarged.

Further, it is our opinion that the transfer of one per cent of the permanent school fund to the available school fund, if made, should be accomplished by general legislation rather than by an appropriation bill rider. Tex. Const., Sec. 35, Art. III; Moore v. Sheppard, 144 Tex. 537, 192 S.W.2d 559 (1946). Thus transferred into the available school fund, it will, of course, be subject to appropriation as are other such funds.

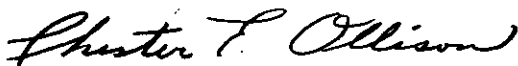
SUMMARY

An enabling Act is necessary to transfer annually one per cent of the permanent school fund to the available school fund authorized in Section 5 of Article VII, Constitution of Texas, as amended. This action was taken in H.B. 14 of Acts 1892, 22nd Leg., 1st C.S., ch. 9, p. 8, but subsequently repealed by Section 179 of S.B. 218, Acts 1905, 29th Leg., R.S., ch. 124, p. 263.

A general law outlining the procedure and prescribing the duties of proper officials in affecting the transfer annually of one per cent of the permanent to the available school fund would clearly constitute legal authority to affect the transfer.

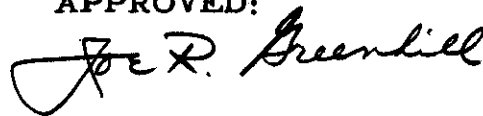
Yours very truly,

ATTORNEY GENERAL OF TEXAS

By 
Chester E. Ollison
Assistant

CEO:mw:v

APPROVED:


FIRST ASSISTANT
ATTORNEY GENERAL